

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
(317) 232-9855

FISCAL IMPACT STATEMENT

LS 6803

BILL NUMBER: HB 1184

DATE PREPARED: Jan 25, 2000

BILL AMENDED: Jan 24, 2000

SUBJECT: Cemeteries.

FISCAL ANALYST: Bernadette Bartlett

PHONE NUMBER: 232-9586

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill provides that the Department of Natural Resources (DNR) may survey and record all burial grounds and may do this work alone or under an agreement with certain entities. The DNR may accept gifts and grants and establish a trust fund for the cemetery survey.

This bill defines development plans and requires, with certain exceptions, development plans to be submitted to the DNR for approval according to standards established by rule that preserve and protect both the rights and interests of landowners and treat human remains with respect and dignity. Penalties are provided for a person who disturbs the ground within 100 feet of a recorded burial ground for the purpose of development without having an approved development plan or in violation of an approved plan.

A person who records any interest in property that contains a burial ground must record an accurate survey showing the approximate location of all human remains. This bill provides penalties beginning January 1, 2003, for failure to record this information.

This bill establishes a procedure for the transfer of property containing a burial ground. The transferor of the property must deliver a disclosure document to the transferee before the transfer takes place. This bill establishes the form that the disclosure must take and requires a disclosure document to be recorded with the county recorder. Penalties are provided for failure to deliver a disclosure document, for making a false statement in a disclosure document, and for failure to record a disclosure document.

The bill also provides that various changes in the Indiana Cemetery Law may not be construed to authorize violation of the confidentiality of information requirements of the National Historic Preservation Act.

Effective Date: July 1, 2000.

Explanation of State Expenditures: (Revised) With respect to surveying and recording burial ground

information, the impact will depend on what actions the DNR elects to take to establish a program to survey and record burial ground information. Expenses for the DNR could be reduced if information is available at the local level. The format of the information available would also affect costs. The DNR could also work with other non-state entities and/or volunteers, which could further reduce expenditures.

The DNR would need to hire one staff person (a PAT II). Personnel costs for a PAT II are estimated at \$41,733 for FY 2001 and \$41,588 for FY 2002, including fringe benefits and other costs. The DNR will be able to absorb these expenses given their current budget.

A person who disturbs the ground within 100 feet of a recorded burial ground for the purpose of development without having an approved development plan or in violation of an approved plan commits a Class A misdemeanor. However, the violation constitutes a Class D felony if the individual disturbs buried human remains or grave markers while committing the offense. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$17,500 in FY 1998. Individual facility expenditures range from \$11,900 to \$29,400. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually or \$5 daily per prisoner. The average length of stay in DOC facilities for all Class D felony offenders is approximately ten and a half months.

Explanation of State Revenues: The DNR may accept gifts, donations, and grants to help finance the burial ground survey. A trust fund may be established that is composed of gift and grant money.

If additional court cases occur and fines are collected, revenue to both the Common School Fund and the State General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000. The maximum fine for a Class D felony is \$10,000. Beginning January 1, 2003, failure to record a survey locating a burial ground constitutes a Class C infraction. The maximum judgment for a Class C infraction is \$500, which is deposited in the State General Fund. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the State General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the State General Fund. In the case of an infraction, 70% of the \$70 court fee would be deposited in the State General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

Explanation of Local Expenditures: (Revised) Surveys must be recorded with the county recorder. County recorders may experience a minimal increase in administrative expenses associated with recording; however, recorders may also charge a fee to cover costs.

A development plan of a municipality requires approval of the executive of the municipality and does not require the approval of the DNR. If the burial ground is located outside of the municipality, the county executive must approve of the plan. A development plan of a governmental entity other than a municipality or the state must obtain approval of the county executive. Local governments should be able to absorb any expenses resulting from the above provisions given their current budgets.

A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44. If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase.

Explanation of Local Revenues: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed, and if collected would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed, and if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Department of Natural Resources and the Department of Correction.

Local Agencies Affected: Trial courts and local law enforcement agencies.

Information Sources: Rick Jones, State Archaeologist, DNR (317) 233-0953; Indiana Sheriffs Association, and the Department of Correction.